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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,205	05/02/2002	Richard A Gambale	B 0410/7284	4832

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KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
STATE STREET FINANCIAL CENTER
ONE LINCOLN STREET
BOSTON, MA 02111-2950

EXAMINER

GHERBI, SUZETTE JAIME J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/048,205

Applicant(s)

GAMBALE, RICHARD A

Examiner

Suzette J. Gherbi

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-12, 14 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14, 16 and 18 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 7-10 and 12, 23 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 11, 22, 24 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/28/02 & 10/23/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment and comments dated 1/11/06 have been received in application serial number 10/048,205. Claims 6, 13, 15 and 17 are canceled. Claims 19-21 are withdrawn.

Response to Arguments

2. Applicant's arguments with respect to Khosravi et al. 6,425,915 have been considered. The examiner agrees that the helical mesh coil comprises edges and turns that are free from projections (noting claim 4 of Khosravi et al.). The examiner has also received and reviewed the copies of assignment exhibits A and B. However upon an updated search a new ground(s) of rejection is made in view of Smith 6,364,904.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 9 and 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3738

5. Claim 9 recites the limitation "the spring". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 5, 7-8, 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith 6,364,904. Smith discloses the invention as claimed noting figures 21-22 comprising: A filament (170, 184) having a rectangular cross sectional profile, and an edge along its length along which is formed a plurality of barbs (174) that project from the edge and are adapted to engage surrounding tissue, the filament being configured in a flexible helical coil having a plurality of turns; wherein the barbs face proximally; wherein the barb has a sharp point (see figure 22 apex).

Product by Process Claim Rejections - 35 USC § 102/103

4. Claim 12 is rejected under 35 U.S.C. 102/103(a) as being unpatentable over Smith. Smith has been disclosed however Smith does not state manufactured the barbs from etched flat sheets of material and wound into the coil. These limitation are being treated as **product by process** as set forth in MPEP 2113 therefore the claim is not limited to the manipulation (formed) only to the structure implied. The burden is shifted to applicant to show an unobvious difference and a statement or argument by the attorney is not factual evidence. See MPEP 716.01

Allowable Subject Matter

5. Claims 14 and 18 are allowed.

6. Claims 3-4 and 11, 22, 24-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 9-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J-J Gherbi whose work schedule is Maxi-Flex off every other Friday and whose telephone number is 571-272-4751.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Suzette J-J Gherbi
23 March 2006